

53B-12-101. Utah Higher Education Assistance Authority designated -- Powers.

The board is the Utah Higher Education Assistance Authority and, in this capacity, may do the following:

(1) guarantee 100% of the principal of and interest on a loan to or for the benefit of a person attending or accepted to attend an eligible postsecondary educational institution to assist that person in meeting any educational expenses incurred in an academic year;

(2) take, hold, and administer real or personal property and money, including interest and income, either absolutely or in trust, for any purpose under this chapter;

(3) acquire property for the purposes indicated in Subsection (2) by purchase or lease and by the acceptance of gifts, grants, bequests, devises, or loans;

(4) enter into or contract with an eligible lending institution, or with a public or private postsecondary educational institution to provide for the administration by the institution of any loan or loan guarantee made by it, including application and repayment provisions;

(5) participate in federal programs guaranteeing, reinsuring, or otherwise supporting loans to eligible borrowers for postsecondary educational purposes and agree to, and comply with, the conditions and regulations applicable to those programs;

(6) adopt, amend, or repeal rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the activities authorized by this chapter;

(7) receive state appropriations for the fund established under Section 53B-12-104 to match deposits and to accept contributions received by it for this purpose;

(8) receive funds from the federal government to assist in implementing federally supported programs administered under this chapter;

(9) engage, appoint, or contract for the services of officers, agents, employees, and private consultants to render and perform professional and technical duties and provide assistance and advice in carrying out the purposes of this chapter, to describe their duties, and to fix the amount and source of their compensation; and

(10) receive employment information from the Workforce Development and Information Division in accordance with Section 35A-4-312 for the purpose of collecting defaulted student loans made under this chapter. The information obtained under this Subsection (10) shall be limited to the employer's name, address, and telephone number for borrowers who have defaulted on a student loan held by the Utah Higher Education Assistance Authority.

Amended by Chapter 382, 2008 General Session

53B-12-102. Separation of duties, responsibilities, funds, liabilities, and expenses -- Appointment of board of directors -- No state or local debt -- Minors eligible for loans.

(1) As used in this section, "fiduciary or commercial information" means information:

(a) related to any subject if the disclosure of the information:

(i) would conflict with fiduciary obligations; or

- (ii) is prohibited by insider trading provisions; or
- (b) of a commercial nature, including information related to:
 - (i) account owners or borrowers;
 - (ii) demographic data;
 - (iii) contracts and related payments;
 - (iv) negotiations;
 - (v) proposals or bids;
 - (vi) investments;
 - (vii) the investment and management of funds;
 - (viii) fees and charges;
 - (ix) plan and program design;
 - (x) investment options and underlying investments offered to account owners;
 - (xi) marketing and outreach efforts;
 - (xii) lending criteria;
 - (xiii) the structure and terms of bonding;
 - (xiv) financial plans; or
 - (xv) reviews and audits, except the final report of the annual audit of financial statements required under Section 53B-8a-111.
- (2) The duties, responsibilities, funds, liabilities, and expenses of the board as the Utah Higher Education Assistance Authority shall be maintained separate and apart from its other duties, responsibilities, funds, liabilities, and expenses.
- (3) (a) In order to carry out the obligation of separation of functions required under Subsection (2), the board may appoint a board of directors of the authority, and designate its chairman to govern and manage the authority.
- (b) The board of directors consists of not less than five persons, not more than two-thirds of whom may be members of the State Board of Regents.
- (c) The board of directors reports to and serves at the pleasure of the State Board of Regents, and has all of the powers, duties, and responsibilities of the Utah Higher Education Assistance Authority except for those expressly retained by the State Board of Regents.
- (4) All meetings of the Utah Higher Education Assistance Authority and its appointed board of directors shall be open to the public, except those meetings or portions of meetings that are closed as authorized by Sections 52-4-204 and 52-4-205, including to discuss fiduciary or commercial information.
- (5) An obligation incurred under this chapter does not constitute a debt of the state or any of its political subdivisions.
- (6) (a) A person who would otherwise qualify for a loan guaranteed by the authority is not disqualified because that person is a minor.
- (b) For the purpose of applying for, receiving, and repaying a loan, a minor has full legal capacity to act and has all the rights, powers, privileges, and obligations of a person of full age with respect to the loan.

Amended by Chapter 46, 2011 General Session

53B-12-103. Gifts by persons, corporations, and associations -- Tax deduction.

(1) A person, domestic corporation, or association organized for the purpose of carrying on business in this state may, regardless of the provisions of any certificate of incorporation, charter, or other articles of organization, make contributions, gifts, grants, bequests, devises, or loans to the authority.

(2) The value of the contribution is deductible in computing the net taxable income of the person, corporation, or association for purposes of an income or franchise tax imposed by this state or its political subdivisions.

Enacted by Chapter 167, 1987 General Session

53B-12-104. Guarantee Fund -- Sources -- Use -- Valuation and restoration of assets -- Other funds.

(1) The authority shall establish the Utah Higher Education Assistance Authority Guarantee Fund from the following sources:

- (a) insurance premiums;
- (b) money appropriated and made available by the state for the purpose of the guarantee fund;
- (c) money directed by the authority to be transferred to the guarantee fund; and
- (d) other money made available to the authority for the purpose of the guarantee fund from other sources.

(2) (a) Money held in the guarantee fund shall be used only for payments required under the authority's guarantee agreements and for other purposes authorized by applicable federal regulations.

(b) Income or interest earned by the investment of money held in the guarantee fund remains in the fund.

(c) The authority may provide by resolution or guarantee agreement that it may not guarantee a loan if the assets of the fund are less than 1% of the unpaid principal amount outstanding upon all loans guaranteed by the fund, or a greater amount as determined by the authority.

(d) In computing the assets of the fund for the purposes of this section, securities are valued at par, cost, or by such other method of valuation as the authority may provide by resolution or agreement.

(e) In the event assets in the fund are less than 1%, or a greater amount as determined by the authority under Subsection (2)(c), the chairman of the authority shall annually, before the second day of December, certify to the governor and to the Director of Finance the amounts required to restore the assets of the fund to the required amount. The governor may request an appropriation of the certified amount from the Legislature in order to restore the required amount to the fund.

(3) The authority may create and establish other subfunds as are necessary or desirable for its purposes.

Amended by Chapter 324, 2010 General Session

53B-12-105. Agreement with loan holders -- Terms unalterable.

(1) The rights vested in the board to fulfill the terms of an agreement made with the holder of a guaranteed loan shall not be limited or altered nor shall the rights and

remedies of the holder be impaired in any manner until the guaranteed loan is fully met and discharged.

(2) An agreement with the holder of a guaranteed loan shall include a statement to this effect.

Enacted by Chapter 167, 1987 General Session

53B-12-106. Guarantee agreements and expenses limited to funds of the authority.

(1) The guarantee of a loan under this chapter shall not be considered the loaning of credit of the state or any of its political subdivisions nor shall it be payable from funds other than those of the authority.

(2) A guarantee agreement shall contain on its face a statement to the effect that: (a) the authority is obligated to pay the agreement solely from the revenues or other funds of the authority; (b) neither the state nor its political subdivisions are obligated to pay the agreement; and (c) neither the faith and credit nor the taxing power of the state or its political subdivisions is pledged to the payment of the guarantee agreement.

(3) An expense incurred in carrying out this chapter is payable solely from funds provided under this chapter.

(4) Nothing in this chapter authorizes the authority to incur indebtedness or liability on behalf of, or payable by, the state or its political subdivisions.

Enacted by Chapter 167, 1987 General Session

53B-12-107. Annual report -- Annual audit -- Reimbursement of state auditor.

(1) Following the close of each fiscal year, the authority submits an annual report of its activities for the preceding year to the governor and the Legislature.

(2) Each report shall include a complete operating and financial statement of the authority during the fiscal year it covers.

(3) The state auditor shall at least once in each year audit the books and accounts of the authority or contract with an independent certified public accountant for this audit.

(4) The authority shall reimburse the state auditor from its available money for the actual and necessary costs of the audit.

Enacted by Chapter 167, 1987 General Session

53B-12-108. State grants to the authority.

(1) The state may make grants of money or property to the authority to enable it to carry out its purposes and exercise its powers, including grants to the Utah Higher Education Assistance Authority Guarantee Fund.

(2) This section does not limit the power the state has to make grants to the authority.

Enacted by Chapter 167, 1987 General Session